
**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

SEASONS-4, INC.	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No.: 02-CV-4751
	:	
THE PEROTTI GROUP, INC.	:	
Defendant.	:	
	:	
v.	:	
	:	
THE RADCO CONSTRUCTION	:	
CORPORATION	:	
and	:	
GIANT FOOD STORES, INC.	:	
Third Party Defendants	:	

**DEFENDANT, THE PEROTTI GROUP, INC.'S FIRST AMENDED THIRD PARTY
COMPLAINT AGAINST RADCO CONSTRUCTION CORPORATION
AND GIANT FOOD STORES**

Defendant, The Perotti Group, Inc., hereby files its Third Party Complaint against Third Party Defendants, The Radco Construction Corporation and Giant Food Stores, Inc., and in support thereof avers as follows:

PARTIES

1. Third Party Plaintiff, The Perotti Group, Inc. ("Perotti") is a Pennsylvania corporation with its principal place of business located at 2605 Durham Road, P.O. Box 702, Bristol, PA 19007.
2. Third Party Defendant, The Radco Construction Corporation ("Radco"), is, upon information and belief, a corporation organized under the laws of the State of New Jersey with a principal place of business located at 29 Vansyckles Road, Hampton,

NJ 08827.

3. Third Party Defendant, Giant Food Stores, Inc. ("Giant") is, upon information and belief, a Pennsylvania corporation with its principal place of business located at 1149 Harrisburg Pike, Carlsile, PA 17013.

FACTUAL BACKGROUND

4. Perotti's claims against Radco and Giant arise out of its work on two separate construction projects, both of which involve the construction of Giant grocery stores.

EASTON PROJECT

5. In late-2000 or early-2001, Radco entered into a contract with Giant to serve as general contractor for the construction of a grocery store located at 301 Town Center Boulevard, Forks Township, Easton PA, 18040 (the "Easton Project").
6. In 2001, Perotti entered into a written contract with Radco to perform certain HVAC and mechanical work at the Easton Project (the "Easton Subcontract").
7. The original Easton Subcontract price was \$379,758.37. Subsequent changes to the scope of the subcontract work resulted in a revised Easton Subcontract price of \$426,935.75.
8. Perotti provided labor and materials to the properties pursuant to the Subcontract with Radco and Perotti fully complied with all its obligations under the Easton Subcontract.
9. Radco received and accepted all labor and materials provided by Perotti.
10. The prices for labor and materials charged by Perotti are the prices which Radco

agreed to pay Perotti.

11. There is a principle balance in the amount of \$118,906.26 due and owing to Perotti for the above-described work performed by Perotti on the Easton Project.
12. All conditions precedent to Radco's obligation to pay Perotti have occurred, been waived or otherwise satisfied.

ROYERSFORD PROJECT

13. At approximately the same time as the Easton Project, Radco entered into a separate contract with Giant to serve as general contractor for the construction of a grocery store located at Lakeview Commercial Center, Walnut Street and 10th Avenue, Royersford, PA (the "Royersford Project").
14. In 2001, Perotti entered into a written contract with Radco to perform certain HVAC and mechanical work at the Royersford Project (the "Royersford Subcontract").
15. The original Royersford Subcontract price was \$334,500. Subsequent changes to the scope of the subcontract work resulted in a revised Royersford Subcontract price of \$335,220.
16. Perotti provided labor and materials to the properties pursuant to the Subcontract with Radco and Perotti fully complied with all its obligations under the Royersford Subcontract.
17. Radco received and accepted all labor and materials provided by Perotti.
18. The prices for labor and materials charged by Perotti are the prices which Radco agreed to pay Perotti.

19. There is a principle balance in the amount of \$116,340.00 owed to Perotti for the above-described work performed by Perotti on the Royersford Project.
20. All conditions precedent to Radco's obligation to pay Perotti have occurred, been waived or otherwise satisfied.

COUNT I
BREACH OF CONTRACT
EASTON PROJECT
Perrotti v. Radco

21. Perotti incorporates the allegations of paragraphs 1 through 12 above as though fully set forth at length.
22. Perotti and Radco entered into the above described legally binding contract on the Easton Project, for good and valuable consideration, whereby Perotti was to perform certain mechanical/HVAC work at the specific request and direction of Radco as described above.
23. At present, Perotti has performed work under the Subcontract valued at \$387,950 in fulfillment of its obligations under the Easton Subcontract as described above.
24. Radco's failure to make payment to Perotti for the work it performed on the Easton Project constitutes a material breach of the Easton Subcontract.
25. As a direct and proximate result of Radco's breach of the Easton Subcontract, Perotti has suffered damages in the amount of \$118,906.26.
26. Radco has no just reason for withholding the amount owed Perotti.
27. As a result of Radco's improper withholding of payment to Perotti, Perotti is also entitled to interest at the applicable statutory rate established by the Contractor

and Subcontractor Payment Act, 73 Pa. C.S.A. §501 et seq.

28. Perotti is also entitled to statutory penalties at the rate established by the Contractor and Subcontractor Payment Act, 73 Pa. C.S.A. §501 et seq.

29. Perotti is also entitled to recover its reasonable attorney's fees pursuant to the Contractor and Subcontractor Payment Act, 73 Pa. C.S.A. §501 et seq.

WHEREFORE, Third Party Plaintiff, The Perotti Group, Inc., hereby demands judgment in its favor and against Third Party Defendant, Radco Construction, Inc., in the amount of \$118,906.26 plus interest, costs of suit, penalties, attorney's fees and such other and further relief as the court deems just and proper.

COUNT II
UNJUST ENRICHMENT
Perrotti v. Radco
(in the alternative)

30. Perotti incorporates the allegations of paragraphs 1 through 12, above as though fully set forth at length.

31. At the request and direction of Radco, Perotti has supplied, performed and furnished labor and materials used in the prosecution in the work required to be performed by Radco under its contract regarding the Easton Project.

32. Radco received and accepted the full value of all the labor, material and equipment Perotti supplied to the Easton Project.

33. Radco accepted and incorporated all of the labor and equipment Perotti supplied to the Easton Project with the knowledge that Perotti expected to be paid the reasonable and/or agreed compensation for that labor, material and equipment.

34. The fair and reasonable value of all the labor and materials supplied by Perotti in the prosecution of the Project exceeds \$387,950.
35. To date, despite proper and timely demand to Radco for payment for such labor and materials, Radco has failed and refused to pay Perotti the remaining balance of \$118,906.26.
36. Perotti has been and is entitled to immediate payment from Radco of an amount in excess of \$118,906.26 representing the unpaid value of the labor and materials supplied by Perotti to the Project.
37. To the extent that the Easton Subcontract is determined to be null and void or otherwise unenforceable or inapplicable, Perotti is entitled to recover from Radco, in Quantum Meruit, the principal sum of \$118,906.26 plus accrued interest and costs.
38. It would be inequitable and Radco would be unjustly enriched if it was not required to pay Perotti the reasonable value of all the labor and materials Perotti supplied to the Easton Project.

WHEREFORE, Third Party Plaintiff, The Perotti Group, Inc., hereby demands judgment in its favor and against Third Party Defendant, Radco Construction, Inc., in the amount of \$118,906.26 plus interest, costs of suit, and such other and further relief as the court deems just and proper.

COUNT III
BREACH OF CONTRACT
ROYERSFORD PROJECT

Perrotti v. Radco

39. Perotti incorporates the allegations of paragraphs 1 through 4 and 13 through 20, above, as though fully set forth at length.
40. Perotti and Radco entered into the above described legally binding contract on the Royersford Project, for good and valuable consideration, whereby Perotti was to perform certain mechanical/HVAC work at the specific request and direction of Radco as described above.
41. At present, Perotti has performed work under the Subcontract valued at \$335,220 in fulfillment of its obligations under the Royersford Subcontract as described above.
42. Radco's failure to make payment to Perotti for the work it performed on the Royersford Project constitutes a material breach of the Royersford Subcontract.
43. As a direct and proximate result of Radco's breach of the Royersford Subcontract, Perotti has suffered damages in the amount of \$116,340.
44. Radco has no just reason for withholding the amount owed Perotti.
45. As a result of Radco's improper withholding of payment to Perotti, Perotti is also entitled to interest at the applicable statutory rate established by the Contractor and Subcontractor Payment Act, 73 Pa. C.S.A. §501 et seq.
46. Perotti is also entitled to statutory penalties at the rate established by the Contractor and Subcontractor Payment Act, 73 Pa. C.S.A. §501 et seq.

47. Perotti is also entitled to recover its reasonable attorney's fees pursuant to the Contractor and Subcontractor Payment Act, 73 Pa. C.S.A. §501 et seq.

WHEREFORE, Third Party Plaintiff, The Perotti Group, Inc., hereby demands judgment in its favor and against Third Party Defendant, Radco Construction, Inc., in the amount of \$116,340 plus interest, costs of suit, penalties, attorney's fees and such other and further relief as the court deems just and proper.

COUNT IV
UNJUST ENRICHMENT
ROYERSFORD PROJECT
Perrotti v. Radco
(in the alternative)

48. Perotti incorporates the allegations of paragraphs 1 through 4 and 13 through 20, above as though fully set forth at length.
49. At the request and direction of Radco, Perotti has supplied, performed and furnished labor and materials used in the prosecution in the work required to be performed by Radco under its contract regarding the Royersford Project.
50. Radco received and accepted the full value of all the labor, material and equipment Perotti supplied to the Royersford Project.
51. Radco accepted and incorporated all of the labor and equipment Perotti supplied to the Royersford Project with the knowledge that Perotti expected to be paid the reasonable and/or agreed compensation for that labor, material and equipment.
52. The fair and reasonable value of all the labor and materials supplied by Perotti in the prosecution of the Project exceeds \$335,220.

53. To date, despite proper and timely demand to Radco for payment for such labor and materials, Radco has failed and refused to pay Perotti the remaining balance of \$116,340.
54. Perotti has been and is entitled to immediate payment from Radco of an amount in excess of \$116,340 representing the unpaid value of the labor and materials supplied by Perotti to the Project.
55. To the extent that the Royersford Subcontract is determined to be null and void or otherwise unenforceable or inapplicable, Perotti is entitled to recover from Radco, in Quantum Meruit, the principal sum of \$116,340 plus accrued interest and costs.
56. It would be inequitable and Radco would be unjustly enriched if it was not required to pay Perotti the reasonable value of all the labor and materials Perotti supplied to the Royersford Project.

WHEREFORE, Third Party Plaintiff, The Perotti Group, Inc., hereby demands judgment in its favor and against Third Party Defendant, Radco Construction, Inc., in the amount of \$116,340 plus interest, costs of suit, and such other and further relief as the court deems just and proper.

COUNT V
UNJUST ENRICHMENT
Perotti v. Giant

57. Perotti incorporates the allegations of paragraphs 1 through 4, 13 through 20 and 39 through 56, above as though fully set forth at length.
58. As set forth above, Perotti supplied, performed and furnished labor and materials used in the construction of the Giant grocery store located at Lakeview Commercial Center, Walnut Street and 10th Avenue, Royersford, PA.

59. At all times relevant hereto, Giant was the intended tenant of the Royersford Project and approved all work that was done in conjunction therewith, including Perotti's work.
60. It is believed and therefore averred that Giant has occupied the site of the Royersford Project or is in the process of taking possession and will shortly begin using the site for its intended purpose, i.e. a grocery store.
61. It is further believed and therefore averred that Giant has failed or refused to pay Radco a portion of the funds it agreed to pay for the construction of the Royersford Project.
62. The funds currently being withheld by Giant represent, in part, monies properly payable to Perotti for its work and the work of its subcontractors and suppliers.
63. Giant received and accepted the full value of all the labor, material and equipment Perotti supplied to the Royersford Project.
64. Giant accepted and incorporated all of the labor and equipment Perotti supplied to the Royersford Project with the knowledge that Perotti expected to be paid the reasonable and/or agreed compensation for that labor, material and equipment.
65. The fair and reasonable value of all the labor and materials supplied by Perotti in conjunction with its work on the Royersford Project exceeds \$335,220.
66. To date, despite proper and timely demand to Giant for payment for such labor and materials, Giant has failed and refused to pay Perotti the remaining balance of \$116,340.
67. Perotti has been and is entitled to immediate payment from Giant of an amount in

excess of \$116,340 representing the unpaid value of the labor and materials supplied by Perotti to the Royersford Project.

68. Perotti is entitled to recover from Giant, in Quantum Meruit, the principal sum of \$116,340 plus accrued interest and costs.

69. It would be inequitable and Giant would be unjustly enriched if it was not required to pay Perotti the reasonable value of all the labor and materials Perotti supplied to the Royersford Project.

WHEREFORE, Third Party Plaintiff, The Perotti Group, Inc., hereby demands judgment in its favor and against Third Party Defendant, Giant Food Stores, Inc., in the amount of \$116,340 plus interest, costs of suit, and such other and further relief as the court deems just and proper.

JOHN G. RICHARDS II, ESQUIRE

DATED: November 26, 2002

DAVIS & BUCCO, P.C.
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Attorney for Defendant

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v.	:	Civil Action No.: 02-CV-4751
	:	
THE PEROTTI GROUP, INC.	:	
Defendant.	:	

CERTIFICATE OF SERVICE

I, John G. Richards II, Esquire, do hereby certify that a true and correct copy of the foregoing Defendant's First Amended Complaint was served by overnight mail on the date set forth below to the parties/counsel set forth below:

Robert A. Prentice, Esquire
Duane Morris LLP
One Liberty Place
1650 Market Street
Philadelphia, PA 19103

Giant Food Stores, Inc.
c/o Diane Tokarsky, Esquire
1149 Harrisburg Pike
Carlisle, PA 17013

Jeffrey J. Chomko, Esquire
1800 One Liberty Place
Philadelphia, PA 19103-7395

JOHN G. RICHARDS II, ESQUIRE

DATED: January 30, 2003